IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 655 of 2002

in

SPECIAL CIVIL APPLICATIONNo 2510 of 2001

with

CIVIL APPLICATION NO. 6429 of 2002

For Approval and Signature:

Hon'ble MR. JUSTICE JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DGP WINDSOR INDIA LTD

Versus

JASWANTBHAI BHAGWANDAS PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 655 of 2002

MR RD DAVE for Appellant No.

MR TR MISHRA for Respondent No. 1

CORAM : MR. JUSTICE JN BHATT

and

MR.JUSTICE K.A.PUJ

Date of decision: 17/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The present Letters Patent Appeal is filed against the order passed by learned Single Judge of this Court on 25-02-2002 in Special Civil Application No.2510/2001, confirming the order passed by the Labour Court, Ahmedabad in Reference (LCA) No.2075/1995, wherein it was held that the order of removal passed by the appellant-Company against the respondent-workman in the departmental inquiry was contrary to the principles of natural justice and was illegal.

2) The brief facts giving rise to the present petition are as under :

3) The present appellant is a company manufacturing plastic processing machineries and one of its factory is situated at Vatva (Gujarat). The respondent-workman was working with appellant-Company as Welder-cum-fitter, which is skilled workman post. It is the case of the appellant that the appellant had received several complaints with regard to inferior quality of machines and about the respondent, who was using mixed powder for coating screws of machines. The appellant, therefore, suspended the respondent-workman on 28-4-1994 and thereafter, chargesheet was issued on 3-5-1994. During the period of suspension, the respondent-workman was paid the subsistence allowance. The inquiry was conducted against the workman and several opportunities were given to him but he did no cooperate with the inquiry proceedings and insisted that he should be represented by an outside union leader. The said request was rejected by the appellant and inquiry was finalised accordingly. The Inquiry Officer has given his report on 25-3-1995 and thereafter, second showcause notice was issued on the respondent-workman on 28th April, 1995 along with it, the copy of inquiry report was served on the respondent-workman. The reply was given by the respondent-workman to the said showcause notice. After considering the departmental inquiry, report of the inquiry officer and reply of the respondent-workman, the disciplinary authority of the appellant-Company passed an order of discharge of the respondent-workman on 2-5-1995. The appellant has also paid the retrenchment compensation amounting to Rs.16,249/- along with discharge order to the respondent-workman.

4) The respondent-workman has raised an industrial dispute on 11-7-1995 before the Assistant Labour

Commissioner, Ahmedabad, who referred to Conciliation and ultimately failure report was filed and hence reference was made to Labour Court for adjudication of dispute being Reference (LCA) No.2075/1995. The Labour Court conducted proceedings. The appellant appeared before the Labour Court and gave deposition of witnesses and supplied all documentary evidence, papers of inquiry proceedings, etc. The appellant has also filed written statement opposing the reference. The inquiry officer was also examined in respect of legality and validity of the departmental inquiry. However, the Labour Court has passed the order on 1st January, 2002, declaring the discharge order as illegal and it is this order of the Labour Court, which was challenged before the learned Single Judge of this Court in Special Civil Application No.2510/2001. While confirming the order of the Labour Court, the learned Single Judge of this Court in his order dated 25-2-2002 has followed the decision of the Hon'ble Supreme Court in the case of Cooper Engineering Ltd. v. PP Mundhe reported in AIR 1975 SC 1900, as well as the decision of this Court in the case of Cadila Healthcare Ltd. v. Union of India reported in 1998 (2) GLH 513 and held that the issue involved in this petition is directly covered by the observations made in the aforesaid decision. The learned Single Judge has, therefore, come to the conclusion that the interim order challenged in this petition under Article 226/227 of the Constitution of India could not be entertained. The learned Single Judge has, however, held that it was open to the petitioner to challenge the said interim order while challenging the final order, if at all, it is adverse to the petitioner, by filing writ petition before this Court. The learned Single Judge has further directed to the Labour Court to examine the matter on merits without being influenced by the observations made in the interim order and the Labour Court to decide the entire reference on merits on the fresh evidence, that may be led by the employer before the Labour Court independently in accordance with law.

5) It is this order of the learned Single Judge, which is under challenge in the present Letters Patent Appeal before this Court.

6) Heard Mr.R.D.Dave, learned advocate appearing for the appellant and Mr.T.R.Mishra, learned advocate appearing for respondent No.1. At the joint request of the parties, matter is taken up for final hearing.

7) Mr.Dave has submitted that the learned Single Judge has not correctly appreciated that the order

deciding the issue as to the legality and validity of the departmental inquiry conducted by the appellant could not be said to be an interim order in as much as, the fact that the said decision of the Labour Court as to the departmental inquiry decides and regulates rest of the proceedings, because if the departmental inquiry is held to be legal and valid then the question remains as regards the proportion of punishment. Whereas if the inquiry is held to be illegal on any count then the appellant ipso facto said to have adduced the evidence and proved charges levelled against the workman and the entire issue is open before the Labour Court, including the quantum of punishment. Mr.Dave has, therefore, submitted that this being a very vital stage for the appellant and decision as to the departmental inquiry goes to the root of the entire matter, the petition against such decision, could not have been rejected on the sole ground of being against interim order. Mr.Dave has therefore, submitted that the learned Single Judge has committed a very serious error of law and he should not have rejected the appellant's petition filed before him. Mr.Dave has further submitted that as far as the decision of the Labour Court as to departmental inquiry is concerned, it is final, which cannot be questioned because thereafter the appellant is compelled to lead evidence to prove the charge levelled against the delinquent and the matter at large is open before the Labour Court. The question of legality and validity of the departmental inquiry will go away once, there will be final award of the Labour Court. He has further submitted that the Labour Court has committed very serious error in passing the impugned order while holding the departmental inquiry as illegal and against the principles of natural justice. He has further submitted that once the Labour Court has held that impugned dismissal order is illegal and against the principles of natural justice, the Labour Court has virtually decided the entire reference at that stage. The same could not be done by the Labour Court without examining the evidence and taking into consideration the total documentary, as well as, oral evidence. The learned Single Judge of this Court should have, therefore, intervened in the matter and quashed and set aside the impugned order of the Labour Court.

8) Mr.T.R.Mishra, learned advocate appearing for respondent, on the other hand had supported the order passed by the Labour Court, as well as by the learned Single Judge of this Court. He has further submitted that the issue involved in the present petition is squarely covered by the decision of the Hon'ble Supreme

Court, as well as by this Court in the cases referred hereinabove and the learned Single Judge has rightly refused to intervene in the order passed by the Labour Court as it was an interim order, which could not be made the subject matter of the writ petition before this Court.

9) We have heard learned advocates appearing for respective parties and also gone through the award passed by the Labour Court, as well as, by the learned Single Judge of this Court. The learned Single Judge has rightly observed that the finding given by the Labour Court about preliminary inquiry, which was not held by the appellant and ultimately, come to the conclusion that the departmental inquiry was vitiated because the same was conducted contrary to the principles of natural justice. The learned Single Judge has further observed that the finding is recorded only in respect of validity and legality of the departmental inquiry and, therefore, the said finding was prima facie finding and not based on appreciation of merits. The matter was still open before the Labour Court and still it was open to the employer to lead fresh evidence and to prove the misconduct and charge levelled against the workman before the Labour Court. The learned Single Judge has extensively discussed about the decision of the Hon'ble Supreme Court in the case of Cooper Engineering Ltd. v. PP Mundhey (supra) and reproduced para 22 in his judgement, which is as under :

"22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic inquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence it will not be thereafter permissible in any proceedings to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter

if worthy can be agitated even after final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

10) The learned Single Judge has also considered the decision of this Court in the case of Cadila Healthcare Ltd. v. Union of India (supra) wherein also the decision of the Hon'ble Supreme Court in the case of Cooper Engineering Ltd. v. PP Mundhey (supra) was considered and it was held by this Court that if the finding of the preliminary issue is in favour of the employer, no additional evidence should be led by the employee if the finding on the said issue is against him, permission will have to be given to the employer to lead additional evidence. Here in the present case also, the finding given by the Labour Court is prima facie finding and the appellant is still entitled to lead additional evidence before the Labour Court, with regard to the charges levelled against the respondent-workman. The Court, therefore, should not entertain the petition challenging the interim order passed by the Labour Court. In our view, the finding arrived at by the learned Single Judge is in accordance with law laid down by the Hon'ble Supreme Court as well as, by this Court earlier. The learned Single Judge has also given just and proper directions to the Labour Court, safeguarding the interest of the appellant.

11) In this view of the matter, we do not think it fit and proper to exercise our powers under Clause 15 of Letters Patent and therefore, the appeal is dismissed with no order as to costs. In view of the order passed in appeal, civil application is also disposed of.

(J.N.Bhatt, J.)

(K.A.Puj, J.)
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